

OGC 73-1432

2 AUG 1973

MEMORANDUM FOR: Mr. Colby

SUBJECT : Authority of the Interagency Classification
Review Committee Re Intelligence Sources
and Methods

1. As you know, both Mr. Helms and Mr. Schlesinger took the position that classification and declassification questions involving intelligence sources and methods are for decision by the department concerned and should not be subject to consideration and action by the ICRC. See their letters of 29 January 1973 and 5 March 1973 to Mr. Ehrlichman attached at Tabs A and B. The Committee, acting on the advice of the Attorney General, has concluded that it has authority in this area and indeed lacks authority to refrain from receiving and acting on appeals from a department's refusal to declassify, even in the area of intelligence sources and methods. From the comments of Committee members at the July meeting, it is apparent also that at least some of the members believe that it is sound policy for this authority to reside in the Committee.

2. To deny this authority to ICRC, an appropriate amendment to the National Security Council Directive which implements Executive Order 11652 would be in order. (It is the National Security Council Directive rather than the Executive Order which gives appeal authority to ICRC.) If you agree with the position taken by your two predecessors, I suggest you recommend to General Scowcroft that the Directive be amended. We have been advised that General Scowcroft would be sympathetic to a proposal of this nature. Also there would appear to be nothing gained by referring

the matter to ICRC, which is well aware of our position and, as indicated above, does not share our views. Suggested language is attached at Tab C. The relevant provisions of the Directive, with the proposed amendments included, is at Tab D.



STA

Lawrence R. Houston

Attachments

OGC:RHL:cav

Orig - Addse

✓1 - OGC Subj: SECURITY E.O. 11652 - CLASSIFICATION
AND DECLASSIFICATION

1 - RHL Signer

1 - Chrono



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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

04/73-0157

73-16916

OFFICE OF THE DIRECTOR

29 JAN 1973

The Honorable John D. Ehrlichman
Assistant to the President
for Domestic Affairs
The White House
Washington, D. C. 20500

Dear John:

I have your letter of January 8th concerning the problems which have developed in connection with the Associated Press request for the declassification of certain classified CIA documents relating to the Guatemalan incident of 1954. I have pondered long and hard some of the fundamental issues involved here. I shall set forth the rationale for our position in hopes of convincing you of the necessity for the action we have taken.

There are two major aspects of handling our information under the Executive Order. The first is the source-and-method problem, which is unique to the intelligence field in Government and for which I have a statutory responsibility. This problem is specifically recognized in the Executive Order. The other aspect is the classification of information based on its content under the other criteria of the Executive Order.

The source-and-method problem is fundamental to the effective operation of an intelligence activity. It recognizes that a fiduciary relationship is established between a source and the Agency. The Agency's general reputation for respecting such fiduciary relationships is essential to any hope of recruiting new sources and exchanging sensitive material with foreign intelligence

services whose history and secrecy have endured for centuries. The content of the information involved is not of primary concern, as it well may be innocuous in itself, but if it reveals the source protection must be provided." To give an example, you will recall that Penkovskiy was the source of some of the critical information involved in the Cuban missile crisis. Some of the information he passed on was comparatively innocuous, but insofar as it would tend to reveal him as the source it would have to be protected as closely as the most sensitive information he provided. Penkovskiy was, of course, eventually detected and arrested and thereby exposed. But, in the many other cases where there is no such detection the protection must continue.

The same is true of methods. Scientific and technological means of obtaining information if revealed would lead to counter-measures which will shut off the flow. Therefore, even though some of the information involved is in itself innocuous, if it tends to reveal the method by which it is obtained it must be protected.

The above is the basis on which the various reviews by Agency staff personnel of the material requested by the Associated Press reached the conclusion that the documents could not be declassified, and having myself reviewed the material I support their conclusion. I see no conflict herein with the Executive Order, which specifically recognizes the need for such protection. "The reason I am reluctant to submit the papers to the ICRC is that any indication that an intelligence agency can be forced to reveal its sources and methods to outside review seriously reduces the confidence of those current and future sources and liaison relationships that are essential to the intelligence function."

As to the problem of classification of information based on its content under the other criteria of the Executive Order, we have a very different problem, but here also we see no conflict with the Executive Order. This has to do with reports or other intelligence material where we have been able to eliminate the source-and-method problem. In other words, the information can be so presented that the confidential sources and methods involved are not revealed. Here then we apply the other criteria of the Executive Order having to do with national security, or international relations, or whatever.

Of the material that cannot be declassified, a great deal is a mixture of sensitive items with comparatively innocuous information. It is almost a practical impossibility to engage in a sentence-by-sentence or phrase-by-phrase release of such material, and the result would lack any real utility. We are currently examining the possibility of developing sanitized accounts of major events in which CIA played a prominent role in past years, in order to account for this role publicly but still protect the intelligence sources and methods involved and information of a continuing sensitive nature. This unfortunately will take time and personnel and can only be a gradual process, but we believe the usefulness of such accounts to historians and others warrants the commitment of resources to the effort.

Some material can be declassified and we recently sent John Eisenhower a report and samples of a quantity of material regularly produced in unclassified form directly by CIA or made available for public use through some intermediate sponsor. This is a continuing effort to be as forthcoming as possible with intelligence material that can be made available for public consumption and is, I believe, completely responsive to the intent of Executive Order 11652.

I believe that basically we all have the same interests at heart, and hope I have provided you with a basis for resolving the current problems we are considering together. And, of course, I am willing to discuss this with you at any time.

Sincerely,

Richard Helms

Richard Helms
Director

OGC:RHL:sin (24 Jan 73)

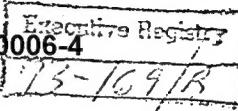
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OGC Subj: RELEASE OF INFORMATION



5 MAR 1973

The Honorable John D. Ehrlichman
Assistant to the President
The White House
Washington, D. C. 20500

Dear John:

I have had the opportunity to review the exchange of correspondence between you and Dick Helms on the subject of the Associated Press's request for release of certain documents dealing with the Guatemalan incident in 1954. This was raised with you originally by John Eisenhower in connection with the question of review by his Interagency Classification Review Committee (ICRC) of such a situation.

The problem of protection of intelligence sources and methods, which is unique to the intelligence community, is the true issue here. I believe it is similar to the problem of the protection of Restricted Data, which is by statute the responsibility of the Atomic Energy Commission. Based on this, the ICRC has a draft position that it shall have no jurisdiction over appeals involving information considered Restricted Data under the Atomic Energy Act of 1954, as amended. Similarly, the Director of Central Intelligence was made responsible by the National Security Act of 1947, as amended, for protection of intelligence sources and methods. Therefore, I believe his determinations in that particular area should also be exempted from the jurisdiction of the ICRC.

Much of our information does not involve the source-and-method problem, however, and is classified in accordance with Executive Order 11652. Its declassification under the provisions of the Order should raise no special problems. Accordingly, I am requesting John

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Eisenhower to permit us to withdraw the Associated Press inquiry from the ICRC agenda to see if it is possible to eliminate the source-and-method issue and possibly accommodate the Associated Press on the substantive information they are seeking. We will pursue the exemption of the intelligence source-and-method issues directly with the ICRC.

Sincerely,

[Signature] James R. Schlesinger

James R. Schlesinger
Director

LRHouston/WEColby:blp

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1 - General Counsel (Info Review Committee Member)

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1 - Chief, Historical Staff

1 - OGC -

1 - OIG (Info Review Committee Member)

STAT

Amendment No. 1 to National Security
Council Directive of May 17, 1972

1. The Directive of May 17, 1972 implementing Executive Order 11652 is amended as follows:

(a) The period ending Part III. C. is deleted and a comma and the following language are inserted in lieu thereof:

Provided, however, That if the Departmental Committee determines, with the concurrence of the Director of Central Intelligence, that continued classification is required because the information discloses intelligence sources or methods, the Committee shall notify the requester of that decision and shall advise him the decision is final.

(b) The period ending Part IX. D. is deleted and a comma and the following language are inserted in lieu thereof:

other than denials concerning information involving intelligence sources or methods.

2. Publication and Effective Date: This amendment shall be published in the Federal Register and shall be effective as of the date of publication.

Henry A. Kissinger
Assistant to the President
for National Security Affairs

(Date)

III Review of Classified Material for Declassification Purposes

C. Departmental Committee Review for Declassification.

The Departmental Committee shall establish procedures to review and act within 30 days upon all applications and appeals regarding requests for declassification. The Department head, acting through the Departmental Committee shall be authorized to over-rule previous determinations in whole or in part when, in its judgment, continued protection is no longer required. If the Departmental Committee determines that continued classification is required under the criteria of Section 5(B) of the Order it shall promptly so notify the requester and advise him that he may appeal the denial to the Interagency Classification Review Committee /. /, Provided, however, That if the Departmental Committee determines, with the concurrence of the Director of Central Intelligence, that continued classification is required because the information discloses intelligence sources or methods, the Committee shall notify the requester of that decision and shall advise him the decision is final.

* * * * *

IX Interagency Classification Review Committee

D. Classification Complaints. Under such procedures as the Interagency Committee may prescribe, it shall consider and take action on complaints from persons within or without the government with respect to the general administration of the Order including appeals from denials by Departmental Committees or the Archivist of declassification requests /. /, other than denials concerning information involving intelligence sources or methods.